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NOV 18 P 4: 22

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November 18, 2004

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NOV 18 P 4: 45

Re: Request for No Further Action on Matter Under Review No. 5541

Dear Mr. Jordan:

I am writing to respond to the Citizens for Responsibility and Ethics in Washington ("CREW") complaint filed against Thomas J. Donohue and the Chamber of Commerce of the United States on September 24, 2004. As counsel for Mr. Donohue and the Chamber, I respectfully request that the Commission find no reason to believe a violation has occurred, and take no further action on this matter. See 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.6(a). By the Commission's letter dated October 14, 2004, the time for this response was extended to the close of business on November 18, 2004.

BACKGROUND

On April 20, 2004, *The Hill* reported that the Chamber had hosted a meeting with Bush Campaign Manager Ken Mehlman and representatives from several trade organizations to discuss get-out-the-vote plans for the 2004 election. Surprisingly, *The Hill* did not report the

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nonpartisan nature of the meeting. The trade groups also invited Democratic National Committee Chairman Terry McAuliffe and Kerry-Edwards Campaign Manager Mary Beth Cahill to attend the April 19, 2004, meeting, but neither of them were able to attend. A copy of the meeting's agenda is attached to this response as Exhibit A and a copy Ms. Cahill's invitation is attached to this response as Exhibit B.

Mr. Mehlman is purported to have decried the impact of section 527 groups at this event. (Compl. at ¶ 8, Ex. B.) By the time Mr. Mehlman spoke, however, the media had already widely reported the very same facts, that is, that groups sympathetic to the Democratic party and possibly in coordination with the Democratic party were raising large sums of non-federal ("soft") money to defeat President Bush. Examples of such articles are attached as Exhibit C. Moreover, Mr. Mehlman's remarks about soft-money organizations were brief. His speaking appearance focused predominantly on the importance of voter participation. Bill Miller, the Vice-President and Political Director for the Chamber, attended the meeting and supports this account of Mr. Mehlman's discussion with the Best Practices Group. Mr. Miller's declaration is attached to this response as Exhibit D. Kerry Campaign Advisor Tad Devine served as a surrogate speaker for Ms. Cahill at the event, and spoke after Mr. Mehlman. (Miller Decl. ¶ 4.)

On July 6, 2004, after having secured the Democratic nomination for President, Senator John F. Kerry named Senator John Edwards as his running mate. Around the same time, Ken Rietz, who is the Chief Operating Officer of Burson-Marsteller, contacted the Chamber to announce an intention to create an entity that would emphasize the need for litigation reform and educate the public about the positions of officeholders on that subject. According to Suzanne Clark, the Chamber's Executive Vice-President and Chief Operating Officer, Mr. Rietz

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explained that Senator Edwards' selection as a candidate for Vice-President, coupled with his affiliation with the plaintiffs' trial lawyers' lobby, presented an opportunity to inform the public about the need for legal reform. Ms. Clark's declaration supporting these facts is attached to this response as Exhibit E.

For over six years – long before Senator Kerry's candidacy for President – the Chamber has been a tireless advocate for litigation reform. In 1998, it incorporated the U.S. Chamber Institute for Legal Reform, Inc. The Institute's principal goals are to reduce frivolous litigation, resolve the medical malpractice and asbestos liability crises, and ensure the efficient operation of our judicial system. Because the Chamber has been strongly identified with the cause of litigation reform, the Chamber agreed to assist Mr. Rietz's media strategy. (Clark Decl. ¶ 5.)

On August 12, 2004, the November Fund was established pursuant to section 527 of the Internal Revenue Code. (Compl. at ¶ 9.) Craig Fuller, the former Chief of Staff to Vice-President George H.W. Bush, and former Tennessee Senator Bill Brock served as the organization's chairmen. (Compl. at ¶ 9.) According to documents filed with the Internal Revenue Service, the November Fund's purpose was to engage in political activity to educate voters on politicians' policy positions. (Compl. at ¶ 3, Ex. A.) Since its inception, the November Fund broadcasted advertisements and posted a website promoting litigation reform. (Compl. at ¶¶ 12-13.) On the organization's website, in print advertisements, and in mass mail pieces – but *not* in broadcast advertisements – the group mentioned Senator John Edwards by name and discussed his earlier career as a plaintiff's attorney. (Clark Decl. ¶ 9.) The November Fund's advertising campaign was entitled "The Truth About Trial Lawyers." (Compl. at ¶¶ 12-13.)

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Shortly after creation of the November Fund, the Chamber publicly announced its support for the November Fund and the organization's campaign to raise awareness about litigation reform. (Compl. at ¶ 9.) Chamber President Thomas J. Donohue appeared on broadcast news programs to explain that the Chamber was supporting the November Fund in order to help increase awareness about litigation reform, which is a top priority for the Chamber and its membership. (Compl. at ¶ 39 Ex. K.) Over the course of three months, the Chamber donated \$1 million and the U.S. Chamber Institute for Legal Reform donated \$2 million to the organization. (Clark Decl. ¶ 9.)

The November Fund held strategy meetings that were always attended by legal counsel to ensure compliance with federal election laws. (Clark Decl. ¶ 8.) In addition, the November Fund did not employ, meet with, or consult representatives from the Bush-Cheney '04 campaign or the White House regarding its strategy for fundraising, expenses, and media. (Clark Decl. ¶ 10.) Chamber Executive Vice-President Suzanne Clark served on the November Fund's Advisory Board, but had no day-to-day responsibilities for its operations. (Clark Decl. ¶ 7.)

On September 24, 2004, CREW filed its complaint with the Commission against the Chamber, Thomas J. Donohue, the November Fund, November Fund Treasurer Bill Sittman, the Bush-Cheney '04 Presidential Campaign, and Ken Mehlman. CREW claims that each respondent violated federal election laws as a result of their involvement in The Truth About Trial Lawyers campaign. (Compl. at ¶ 7.) CREW's complaint alleges: (1) the November Fund is an unregistered political party committee that failed to report required campaign disclosures on receipts and expenditures; (2) the November Fund coordinated with the Bush-Cheney campaign

and the Chamber to produce advertisements critical of Senators Edwards and Kerry; (3) the November Fund paid for illegal advertisements attacking Senator Edwards; and (4) the Chamber made illegal corporate contributions to the November Fund. (Compl. at ¶¶ 22, 35, 40, and 43.)

Because there is no legal or factual basis to believe that the Chamber or Mr. Donohue violated any law or regulation, we respectfully request that the Commission find no reason to believe a violation occurred and take no further action on CREW's complaint.

ANALYSIS

I. CREW's Complaint is Defective.

CREW's complaint is defective on its face. The allegations set forth are not just based on news reports – reports that are incomplete or inaccurate as shown below – but on news reports that purport to report on *prospective* events. In other words, the articles on which CREW relies merely speculate about what might occur in the future; none of the articles report on what the November Fund *actually did*.

Moreover, the chronological sequence of events belies CREW's charges. The April 19, 2004, meeting at which Mr. Mehlman spoke preceded by almost three months Senator Edwards' selection by Senator Kerry as the Democratic Vice-Presidential nominee. It was only after that selection that the November Fund was formed, and only thereafter that the Chamber made donations to the November Fund. In short, the only purported evidence of "coordination" is the occurrence of events that are so removed in time, and separated by key events, that it is simply unreasonable as a matter of law to conclude that the events are related.

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II. The Chamber Did Not Control The November Fund.

The Chamber and the November Fund are completely separate entities. Each organization maintains its own office, employees, management structure, and budget. The Chamber did not "create" the November Fund. Rather, Burson-Marsteller Chief Operating Officer Ken Rietz contacted Chamber officers in July 2004 to inquire about their interest in supporting a media campaign to inform the public about the need for legal reform. (Clark Decl. ¶ 5.) Mr. Rietz and others formed and ran the November Fund.

Legal reform is one of the Chamber's highest priorities, which is why it donated to the November Fund. After discussions with Mr. Rietz, Chamber officers agreed that the well-publicized announcement of Senator John Edwards as a Vice-Presidential nominee presented an opportunity to highlight legal reform issues to voters, particularly because of the Senator's successful career as a plaintiff's attorney and his close association with trial lawyers who opposed malpractice and class action reform initiatives. (Clark Decl. ¶ 5.) Although it received donations from the Chamber, the November Fund made its own decisions regarding television and radio advertising, mass mail, and Internet communications. (Clark Decl. ¶¶ 7, 10.)

III. "The Truth About Trial Lawyers Campaign" Did Not Violate Federal Election Laws.

CREW claims that the November Fund violated federal election laws by collecting corporate funds to pay for "ads attacking Senators Kerry and Edwards." (Compl. at ¶ 43.) CREW mischaracterizes the November Fund's voter education activities. Because the November Fund did not pay for any communications that qualify as electioneering

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communications or express advocacy, neither the Chamber nor the November Fund committed a violation of federal election laws.

A. *The November Fund Did Not Produce "Electioneering Communications."*

Pursuant to the Federal Election Campaign Act ("the Act"), three factors determine whether an advertisement or public communication constitutes an electioneering communication in a Presidential or Vice-Presidential election. See 2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29. First, the communication must involve a broadcast, cable, or satellite communication. 2 U.S.C. § 434(f)(3)(A)(i)-(ii); 11 C.F.R. § 100.29(a), (b)(1). Second, the communication must refer to a clearly identified candidate. 2 U.S.C. § 434(f)(3)(A)(i)(I); 11 C.F.R. § 100.29(a)(1), (b)(2). Third, the communication must be publicly distributed within 60 days before a general election. 2 U.S.C. § 434(f)(3)(A)(i)(II)(aa); 11 C.F.R. § 100.29(a)(2), (b)(3)(ii).

A communication that is disseminated through means other than television, radio, cable television, or satellite is *not* an "electioneering communication." 2 U.S.C. § 434(f)(3)(B)(i), (iv); 11 C.F.R. § 100.29(c)(1)-(2). Thus, communications over the Internet and advertisements in print media, such as magazines and newspapers, are *not* "electioneering communications." 2 U.S.C. § 434(f)(3)(B)(iv); 11 C.F.R. § 100.29(c)(1).

The November Fund produced and disseminated two categories of media promoting litigation reform. The first involved television advertisements. The November Fund's television advertisements did not refer to Senator John Kerry, Senator John Edwards, or any other candidate for federal office and, thus, are not regulated either as electioneering communications

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or as express advocacy. (Clark Decl. ¶ 9.) The second class of media consisted of print advertising, telephone calls, and Internet communications. Although these sources of information mentioned Senator Edwards' career history as a trial attorney, they are excluded from the definition of electioneering communications. (Clark Decl. ¶¶ 8-9.)

B. *The November Fund Did Not Engage in Express Advocacy.*

The Act regulates organizations that engage in express advocacy. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court established the bright line express advocacy test, which has been repeatedly reaffirmed by the Court and other federal courts. See, e.g., *F.E.C. v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356 (1995). Although *McConnell v. F.E.C.*, 540 U.S. 93, 124 S. Ct. 619 (2003), upheld amendments to the Federal Election Campaign Act that precisely define and regulate so-called "electioneering communications," the express advocacy test continues in full force to limit regulation of other political communications. Under the express advocacy test, a communication falls within the prohibition on corporate expenditures only if it expressly advocates the election or defeat of a clearly identified candidate for federal office using such terms as "vote for the President," "re-elect your Congressman," or "support the Party's nominee." See *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).¹

¹ The Commission's regulations suggest that a communication may be a form of express advocacy if, taken as a whole, it can *only* be interpreted by a reasonable person as promoting the election or defeat of a candidate because it is either suggestive of *only* one meaning, or reasonable minds could not differ as to whether it encourages the candidate's election or defeat. See 11 C.F.R. § 100.22(b). At least *three* federal courts have invalidated 11 C.F.R. § 100.22(b). See *Maine Right to Life Comm., Inc. v. F.E.C.*, 98 F.3d 1 (1st Cir. 1996); *Virginia Soc'y for Human Life v. F.E.C.*, 263 F.3d 379 (4th Cir. 2001); *Right to Life of Dutchess County v. FEC*, 6 F. Supp. 2d 248, 254 (S.D.N.Y. 1998); see also *F.E.C. v. Christian Action Network*, 92 F.3d 1178 (4th Cir. 1996) (unpublished),

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The November Fund's "The Truth About Trial Lawyers" campaign consisted of print advertisements, Internet media, mass mail, and broadcast advertising. (Clark Decl. ¶ 9.) According to the most recent disclosure reports filed with the Internal Revenue Service, the November Fund spent approximately \$2.6 million to promote the effort. More than half of the resources allocated toward "The Truth About Trial Lawyers" campaign paid for television and radio advertising that *did not mention any candidate for federal office*. None of these communications – broadcast, print, or Internet – expressly called for the election or defeat of a federal candidate. (Clark Decl. ¶ 9.) The predominant message in each November Fund message was the need for litigation reform. Therefore, none of the November Fund's advertisements fit the definition of "electioneering communications" or "express advocacy."

IV. The November Fund is Not a "Political Committee."

CREW alleges that the November Fund violated federal election laws because it is a political committee that failed to comply with the Act's limitations, prohibitions, and reporting requirements. (Compl. ¶ 22.) For several reasons, CREW's classification of the November Fund is inaccurate. The November Fund is *not* a political committee that engages in express advocacy or contributes to candidates or their authorized committees. Nor is its "primary purpose" to support or oppose federal candidates.

A. *The Chamber Did Not Make "Contributions" to the November Fund and the November Fund Did Not Make "Expenditures."*

*off*g, 894 F. Supp. 946, 953-59 (W.D. Va. 1995) (ruling that the regulation could cover *only* speech which contained explicit words of express advocacy). No courts have upheld the regulation.

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The Act and the Commission's regulations define a political committee as "any committee, club, association, or other group or person which receives *contributions* aggregating in excess of \$1,000 in a calendar year or which makes *expenditures* aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a) (emphasis added). A "contribution" is anything of value that is provided to "influence a federal election." See 2 U.S.C. § 431(8); 11 C.F.R. § 100.52(a). An "expenditure" is any payment or purchase made for the same purpose. See 2 U.S.C. § 431(9); 11 C.F.R. § 100.111(a). If an organization meets the definition of a "political committee," it must comply with the Act's limitations, prohibitions, and reporting requirements. See 2 U.S.C. §§ 433, 434, 441a(a)(1)-(2), 441b(a), and 441f. In *Buckley*, the Court specifically limited the phrase "for the purpose . . . of influencing" a federal election to express advocacy. See *Buckley v. Valeo*, 424 U.S. 1, 78-81 (1976).

As shown, the November Fund did not pay for any form of express advocacy or electioneering communications. (Clark Decl. ¶ 9.) Moreover, the organization did not make any contributions to candidates for federal office. Instead, the November Fund solicited donations from groups such as the Chamber to disseminate public information about legal reform. A copy of the November Fund's solicitation letter is attached to this response as Exhibit F.

B. *Even Assuming the "Major Purpose" Test Were Applicable, the November Fund Does Not Meet It.*

CREW cites *Buckley* for the proposition that the definition of "political committee" includes organizations that exist for the "major purpose" of nominating or electing a federal candidate. See *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); see also *F.E.C. v. Mass. Citizens for*

Life, Inc., 479 U.S. 238, 252 n.6 (1986). The passage of *Buckley* to which CREW refers is mere *dicta*; the “major purpose” language does not appear anywhere in the Act and the Commission has not incorporated the test as part of its regulations.

Indeed, the Bipartisan Campaign Reform Act undermines the so-called “primary purpose test.” In 2 U.S.C. § 441i(e)(4)(B), federal officeholders are specifically allowed to solicit individual donors for up to \$20,000 per year – four times the contribution limit to “political committees” – for “an entity whose principal purpose is to conduct” defined “federal election activity.” If, as CREW contends, any entity that intended to “influence a federal election” was a political committee subject to the pertinent \$5,000 contribution limit, section 441i(e)(4)(B) would be nonsensical.

Even under the “major purpose” test, however, CREW’s characterization of the November Fund as a political committee is still erroneous. Contrary to CREW’s assertion, the November Fund is not an organization that seeks to elect or defeat any candidate for a federal election, nor was it created to achieve such a goal. (Compl. at ¶¶ 20-21.) Rather, its major purpose is to promote litigation reform. Indeed, more than half of the money spent by the November Fund as of its last Internal Revenue Service disclosure (\$1.4 million out of \$2.6 million) was for television and radio advertising that *did not even refer to a federal candidate*. (Clark Decl. ¶ 9.)

CREW ignores the contents of its own complaint, which clarify that the November Fund’s express purpose is “[t]o engage in political activities that *educate* the general public

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regarding the public policy positions of candidates for federal, state, and local office and mobilize voters in compliance with federal and state laws." (Compl. at ¶ 3, Ex. A.) (emphasis added). According to Suzanne Clark, a member of the November Fund's Advisory Board, the organization paid for print advertising, mass mail, Internet communications, and broadcast media to inform the public about the trial lawyers' abuse of the legal system, to highlight the economic costs of frivolous lawsuits, and to advocate class action litigation reform. (Clark Decl. ¶ 5.)

In its argument that the November Fund attempted to influence Senator Edwards' candidacy for Vice-President, CREW quotes the organization's officers out of context. For example, CREW notes that November Fund Director Ken Rietz took a leave of absence from his employer because of the company's policy of avoiding involvement in candidate elections "in any way." (Compl. at ¶ 20, Ex. I.) Regardless of the subjective concerns of Rietz's prior employer, the statement does not equate to a November Fund policy or suggest a purpose to defeat Senator Edwards. In contrast to the remark, Rietz and other November Fund officers stated publicly that the purpose of the organization was to educate voters about the economic burdens caused by trial lawyers and frivolous lawsuits. (Compl. at Exs. E, F.)

V. The Chamber, the November Fund, and the Bush-Cheney '04 Campaign Did Not Engage in Coordinated Activity.

CREW has accused the Chamber of engaging in coordinated activity with the November Fund and the Bush-Cheney campaign by providing funding to the November Fund to help pay for "The Truth About Trial Lawyers" campaign. (Compl. at ¶ 35.) CREW asserts that the Bush-Cheney '04 campaign engaged in an effort "to recruit trade associations to help with the

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President's re-election" by allowing Campaign Manager Ken Mehlman to speak at a "closed door" meeting hosted by the Chamber on April 19, 2004. (Compl. at ¶ 8.) As shown (pp. 1-2 above), however, the April 19, 2004, meeting to which CREW refers was in fact a *nonpartisan* meeting at which representatives of *both* the Bush and Kerry campaigns spoke. CREW also claims that employees of the November Fund had "connections" to the Bush-Cheney '04 campaign (Compl. at ¶¶ 31-34), but each of the alleged connections is very dated – dating back to the 1970s in the case of former Republican National Committee Chairman Brock – and *none* of the allegations involve connections with the Bush-Cheney '04 campaign. In short, CREW has submitted no evidence whatsoever that could plausibly prove coordination.

According to the Act, an activity is coordinated if it involves "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" 2 U.S.C. § 441a(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a). A coordinated communication is treated as an in-kind contribution to a candidate or his authorized committee, and must be reported. 11 C.F.R. § 109.20. A communication is coordinated with a candidate, authorized committee, or an agent thereof, if it is shown that (1) the communication is paid for by someone other than the candidate or committee; (2) the communication contains "content" defined by the Commission's regulations; and (3) the parties involved engage in "conduct" defined by the Commission's regulations. 11 C.F.R. § 109.21(a).

A. *The Chamber Did Not "Pay For" the November Fund's Voter Education Efforts.*

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According to the Commission's regulations, a communication is coordinated with a candidate if it is paid for by someone other than the candidate, authorized committee, or agent of the foregoing. 11 C.F.R. § 109.21(a)(1). Although the Chamber does not dispute that it and its affiliate donated approximately \$3 million to the November Fund, the payments were made at the Chamber's own volition. They were *not* provided at the request of representatives of the White House or the Bush-Cheney '04 campaign. (Clark Decl. ¶ 10.) Chamber officers have not discussed any aspects of the November Fund with the White House or the Bush-Cheney campaign. (Clark Decl. ¶ 10; Miller Decl. ¶ 6.) The Chamber's decision to support the November Fund was made independently of the White House and Bush-Cheney campaign and instead was based upon its desire to inform voters about litigation abuses by trial lawyers. (Clark Decl. ¶¶ 5, 10.) Therefore, CREW's allegations of coordinated activity fail under the first prong of the Commission's regulations.

B. *CREW's Complaint Scarcely Meets the Commission's "Content" Standard for Coordinated Communications.*

The Commission's regulations set forth four content standards that determine whether the subject matter of a communication is reasonably related to an election.² A communication meets the content requirement if it is (1) an "electioneering communication;" (2) a public communication that disseminates the candidate's campaign materials; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate;

² On September 18, 2004, the United States District Court for the District of Columbia remanded several of the Commission's regulations promulgated in the wake of the Bipartisan Campaign Reform Act to the Commission. *See Shays v. F.E.C.*, Civ. No. 02-1984, slip op. at 155-57 (D.D.C. Sept. 18, 2004). Nevertheless, the court allowed the regulations to remain "on the books" for the 2004 election. *Shays v. F.E.C.*, No. 02-1984, slip op. at 2 (D.D.C. Oct. 19, 2004).

or (4) a public communication directed at voters in a clearly-identified candidate's jurisdiction and refers to the candidate within 120 days of an election. 11 C.F.R. § 109.21(c).

Although the November Fund's print advertising, website, and mass mail, which was distributed beginning in August, contained photos of Senator Edwards and discussed his previous career as a trial attorney, the communications do not qualify as express advocacy, electioneering communications, or distribution of Bush-Cheney '04 campaign material. See *supra* Part III.

C. *CREW's Complaint Fails To Meet the Commission's "Conduct" Standard for Coordinated Communications.*

The final test for proving that a communication is coordinated is the "conduct" standard. There are six circumstances that fulfill this prong: (1) when party paying for the communication does so at the request of the candidate or the authorized committee; (2) when the candidate or authorized committee is materially involved in the decision-making on the communication; (3) when the candidate or authorized committee makes a substantial decision regarding the creation, production, or activities involved with the communication; (4) when the candidate and the payor share a common vendor; (5) when the communication is paid for by a former employee of the candidate's campaign; or (6) when the communication disseminates a candidate's campaign materials. 11 C.F.R. § 109.21(d).

CREW's complaint does not allege facts that fulfill any of the Commission's conduct standards. As explained above, CREW states only two grounds for its charge. First, CREW claims that Craig Fuller, William Brock, and Ken Rietz, who are employees and officers of the

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November Fund, have "connections" to the Bush-Cheney '04 campaign. (Compl. at ¶¶ 31-34.) This term – "connections" – is not relevant to the Commission's regulations on coordinated activity. The Commission expressly states that coordinated activity can be proven only when a communication is paid for by a "former employee." See 11 C.F.R. § 109.21(d)(5). Craig Fuller, William Brock, and Ken Rietz are not, nor have they ever been "employed" by Bush-Cheney '04 or the White House during President George W. Bush's term in office. CREW's quixotic attempt to link these individuals to Bush-Cheney '04 through Senator Brock's appointment as Chairman of the West Coast Port Worker Lockout Panel during 2002, or through his volunteer efforts for President Bush during the 2000 presidential election, (Compl. at ¶ 32), are clearly not enough. Aside from these tenuous associations, the most substantial alleged relationship between these individuals and Bush-Cheney '04 is that each individual is a member of the Republican Party.

Second, CREW claims that the Bush-Cheney '04 campaign engaged in an effort "to recruit trade associations to help with the President's re-election" by allowing Campaign Manager Ken Mehlman to speak at a "closed door" meeting hosted by the Chamber on April 19, 2004. (Compl. at ¶ 8.) CREW bases its allegation on an article published in *The Hill* on April 20, 2004. (Compl. at ¶ 8, Ex. B.) According to the article, Mr. Mehlman is purported to have "decried the impact of [] soft money groups." (Compl. at ¶ 8, Ex. B.)

The Chamber event was a nonpartisan event attended by representatives of both the Bush and Kerry campaigns; it was not, as CREW asserts, a closed door meeting in which the Bush-Cheney campaign conspired with trade groups to help with the presidential election. (Compl. at

¶ 8.) Rather, representatives from 66 trade organizations visited the Chamber on April 19 to discuss best practices for *nonpartisan* get-out-the-vote efforts during the 2004 election. (Miller Decl. ¶ 4.)

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The group developed the idea for the event based on a January 30, 2004, meeting between Business Roundtable President John J. Castellani and Democratic National Committee Chairman Terry McAuliffe. (Miller Decl. ¶ 3.) Mr. Castellani met with Mr. McAuliffe to solicit ideas for nonpartisan voter mobilization activities. (Miller Decl. ¶ 3.) Mr. McAuliffe not only made suggestions for a trade group meeting, but he also recommended that the group invite representatives from the Republican National Committee, the Democratic National Committee, and both presidential campaigns to attend and speak. (Miller Decl. ¶ 3.) On the basis of Mr. McAuliffe's advice, the group specifically invited Mr. McAuliffe and Mary Beth Cahill, the Campaign Manager of the Kerry campaign, to speak at the April 19 meeting. A copy of Ms. Cahill's invitation is attached to this response as Exhibit B. Tad Devine, a senior advisor to the Kerry campaign, attended and spoke on behalf of the Kerry campaign at the event. (Miller Decl. ¶ 4.)

Thomas J. Donohue, the President of the Chamber and a respondent in this matter, did not attend the April 19 meeting. (Miller Decl. ¶ 4.) Moreover, on the date Mr. Mehlman made the remarks, the November Fund *did not exist* and Senator Edwards *was not a candidate for Vice-President*. Finally, no individuals eventually employed by or affiliated with the November Fund, including Suzanne Clark, attended the meeting. (Clark Decl. ¶ 4.)

Because CREW fails to allege any facts that fulfill the Commission's conduct standard, the complaint must be dismissed forthwith.

VI. Allegations Against Thomas J. Donohue Should Be Dismissed

CREW does not allege any facts that Mr. Donohue individually violated federal election laws. Besides publicly commenting on the Chamber's support for the November Fund, Mr. Donohue has not engaged in any individual behavior relevant to this complaint. Having no factual basis to do so, CREW's decision to name Mr. Donohue as a respondent is an act of brazen harassment that must not be permitted.

* * * * *

In sum, there is no legal or factual substance to CREW's allegations against Mr. Donohue or the Chamber. Accordingly, respondents respectfully request that the Commission find no reason to believe a violation has been committed, and close the matter with no further action.

If you have questions or require additional information, please do not hesitate to contact me at (202) 756-8003.

Respectfully submitted,


Bobby R. Buschfield

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ASSOCIATION GOTV BEST PRACTICES SHARE GROUP KICKOFF MEETING

***Monday, April 19, 2004
U.S. Chamber of Commerce
1615 H Street N.W.
The Briefing Center***

AGENDA

10:00 a.m. – Meeting Convenes

- I. OPENING REMARKS** *R. Bruce Josten
Executive Vice President-Government Affairs
U.S. Chamber of Commerce*
- II. KEY BEST PRACTICES** *Jade West
Senior Vice President-Government Relations
National Association of Wholesaler-Distributors*
- III. BEST PRACTICES CASE STUDY: NATIONAL RESTAURANT ASSOCIATION**
*R. Lee Culpepper
Senior Vice President-Government Affairs & Public Policy*
- IV. THE VIEW FROM THE BUSH
CAMPAIGN** *Hon. Ken Mehlman (Confirmed)
Campaign Manager
Bush-Cheney '04 Inc.*
- V. BEST PRACTICES CAST STUDY: EDISON ELECTRIC INSTITUTE**
*Thomas R. Kuhn
President*

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VI. THE VIEW FROM THE RNC

Ed Gillespie (Confirmed)
Chairman
Republican National Committee

VII. BEST PRACTICES CASE STUDY: ASSOCIATED GENERAL CONTRACTORS

Jeffrey D. Shoaf
Senior Executive Director, Government & Public Affairs

VIII. BEST PRACTICES CASE STUDY: THE BUSINESS ROUNDTABLE/INTERNATIONAL PAPER CO.

John Runyan
Senior Public Affairs Manager-Federal

**IX. THE VIEW FROM THE KERRY
CAMPAIGN**

Mary Beth Cahill (Invited)
Campaign Manager
Kerry for President

X. THE VIEW FROM THE DNC

Terry McAuliffe (Invited)
Chairman
Democratic National Committee

XI. NETWORKING LUNCH WITH TABLE REPORTS

1:30 p.m. – Meeting Adjourns

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Business Roundtable

1615 H Street NW

Telephone

202.872.1260

Facsimile

Suite 1100

202.466.4500

Washington, DC 20036-5610

Website businessroundtable.org

April 14, 2004

Ms. Mary Beth Cahill
Campaign Manager
Kerry Campaign
901 15th Street, NW
Suite 700
Washington, DC 20005

Dear Mary Beth:

A number of trade associations, a list of which is attached, have formed an informal coalition with the purpose of increasing the effectiveness of our "get-out-the-vote" initiatives. It is the intention of this group to share "best practices" that individual associations are deploying to ensure we are effectively using the tools available to us to encourage voter participation.

This informal group has scheduled a kick-off meeting for Monday, April 19th. We would like to invite you to join us for part of this meeting to address the group on the view of voter participation from the Kerry campaign. I am writing on behalf of the participating trade associations to extend that invitation. Ken Mehlman will be participating in the same capacity from the Bush campaign.

The meeting will be held at the offices of the U.S. Chamber of Commerce at 1615 H Street on Monday, April 19th from approximately 10:00 a.m. to 1:00 p.m. I hope you will be able to participate, and we can be very flexible to accommodate your schedule. As we are in the process of finalizing the agenda for that session for distribution today or tomorrow to the participants, I would very much appreciate if you or your staff could advise of your availability promptly. I can be reached at 202.872.1260.

Sincerely,

John J. Castellani

Henry A. McKinnell Jr.
President
Chairman

Franklin D. Barnes
Lanthe Mac
Co-Chairman

Edward B. Rust, Jr.
State Farm
Co-Chairman

John J. Castellani
President

Patricia Hanahan Lerner
Executive Director

Johnna L. Schneider
Executive Director
External Relations

28044210663

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The Washington Post January 13, 2004 Tuesday

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January 13, 2004 Tuesday
Final Edition

SECTION: A Section; A04

LENGTH: 678 words

HEADLINE: GOP Urges Wider Ban on 'Soft Money';
FEC Asked to Rule on '527' Organizations That Raise Unlimited Funds

BYLINE: Thomas B. Edsall, Washington Post Staff Writer

BODY:

The Republican National Committee plans to ask the Federal Election Commission today to ban the raising of \$300 million or more in "soft money" by pro-Democratic groups seeking to pay for voter mobilization and TV ads in this year's elections.

The request marks a reversal of traditional Republican opposition to regulating political money. Democrats say the shift is motivated by the GOP's recognition that tougher regulation might work to Democrats' disadvantage.

The Republican request would restrict most political spending to "hard money" contributions, which are limited to \$2,000 per individual to a federal candidate. The Republican Party and President Bush hold a substantial advantage over Democrats in raising such money.

Last year, the Republicans' national, senatorial and congressional campaign committees raised nearly \$183 million in strictly regulated hard money, more than twice the \$81 million raised by Democratic committees, according to PoliticalMoneyLine, a Web site that tracks political money. Bush, in turn, has raised about \$131 million in hard money, three times the \$41 million raised by his closest Democratic competitor, Howard Dean.

The Republican request takes aim at efforts by Democratic strategists such as Harold Ickes, former aide to President Bill Clinton, and Steve Rosenthal, former AFL-CIO political director.

They have set up special political committees known as "527s" for a section of the tax code.

These committees have begun accepting soft money donations, which are unlimited. The pro-Democratic committees have received contributions as large as \$10 million from financier George Soros, unions and other liberal benefactors to conduct voter mobilization and run ads in at least 15 battleground states.

In 2002, Congress approved the McCain-Feingold law barring the national political parties and federal candidates from raising and spending such soft money. Soft money includes all contributions made directly from corporate or union treasuries, and individual donations of more than \$25,000 to a political party or \$2,000 to a federal candidate.

"It is now incumbent upon the FEC to not sanction the undermining and evasion of [the McCain-Feingold law] through the activities of newly formed 527 organizations dedicated to electing or defeating specific federal candidates," wrote RNC lawyer Charles R. Spies.

RNC Chairman Ed Gillespie -- whose group previously urged the Supreme Court to overturn McCain-Feingold -- pointedly asked his Democratic counterpart, Terence R. McAuliffe, to co-sign the letter to the FEC. McAuliffe said he would consider co-signing if Gillespie would expand the request's scope to cover such pro-Republican groups as Progress for America, United Seniors Association and Americans for Tax Reform, most of which use a different section of the tax code, "501." "I look forward to your reply," McAuliffe concluded his "Dear Ed" letter.

James Jordan, spokesman for three pro-Democratic groups -- the Media Fund, America Coming Together and America Vote -- denounced the RNC action. "This is nothing more nor less than another attempt by Republican special interests to silence progressive voices in an election year," he said.

The RNC letter to the FEC marks an unlikely political marriage of convenience between the GOP and such campaign finance watchdog groups as Democracy 21, the Campaign Legal Center and the Center for Responsive Politics. The groups have outlined a legal case against 527s in communications to the FEC, and on Thursday they plan to announce further legal action.

Conversations with some FEC members indicate the panel may be willing to take a tough enforcement stand toward 527s, both in response to a pending request for an advisory opinion and in broader rule-making. None of the commissioners was willing to commit to a specific policy, but Michael E. Toner, a Republican member, said that if independent but partisan groups are allowed to spend "hundreds of millions of dollars . . . a lot of people believe the McCain-Feingold law will be seriously undermined."

LOAD-DATE: January 13, 2004

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Date/Time: Thursday, November 18, 2004 - 9:34 AM EST

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The Washington Post February 19, 2004 Thursday

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February 19, 2004 Thursday
Final Edition

SECTION: A Section; A06

LENGTH: 695 words

HEADLINE: FEC Moves to Regulate Groups Opposing Bush

BYLINE: Thomas B. Edsall, Washington Post Staff Writer

BODY:

The Federal Election Commission decided yesterday that many of the political committees raising "soft" money to campaign against President Bush are subject to regulation, but it postponed deciding how tough the restrictions should be.

The FEC voted 4 to 2 to warn Americans for a Better Country that activities that "promote, attack, support or oppose" a federal candidate must be paid for with hard money, a type of political donation that, unlike soft money, has tight restrictions on sources and amounts. This is a broader standard than used in the past. Activities that benefit a mix of federal, state and local candidates are to be paid for with a mix of hard and soft money, the commission determined.

Interpretations of yesterday's action varied greatly.

FEC Vice Chairman Ellen L. Weintraub said the decision should not severely constrain those seeking to raise and spend soft money, which is not subject to limits and can come from unions and corporations as well as individuals. "I don't think sophisticated political actors would have a hard time figuring out how to work within this framework," she said.

Republican National Committee Chairman Ed Gillespie, in contrast, said the ruling will put out of business "groups like America Coming Together [ACT], the Media Fund, Partnership for America's Families and the MoveOn.org Voter Fund." All are pro-Democratic groups organized under Section 527 of the tax code.

These and other 527 committees, as they are known, are aiming to become a shadow version of the Democratic Party, financing television commercials and voter mobilization in 15 to 17 battleground states this fall. They plan to pay for some or all of their activities with large soft-money contributions.

The McCain-Feingold campaign finance law barred the national parties from accepting soft money, prompting the creation of many 527 committees. Campaign watchdog groups have challenged the groups' legality, and yesterday's FEC ruling was among the first to address their questions.

Harold Ickes, a former aide to President Bill Clinton and now head of the Media Fund, accused Gillespie of misconstruing the consequences of yesterday's FEC decisions to "inhibit our supporters and donors by his willful misreading."

Jim Jordan, spokesman for the Media Fund and ACT, two of the most ambitious pro-Democratic groups, said: "It's clear that today's action is limited in its scope. We remain confident that we'll have the room we need to operate robustly and effectively."

The Media Fund, which plans to run TV ads attacking Bush and supporting Democrats, and ACT, which plans to conduct voter mobilization in 17 battleground states, have a fundraising goal this year of \$95 million each.

McCain-Feingold's restrictions on soft money have hurt the Democratic Party, which depended heavily on large contributions from unions and rich partisans to pay for issue ads and voter mobilization. The GOP has been far more successful raising still-legal hard money, which can involve contributions of up to \$25,000 to the parties.

Key decisions yet to be made by the FEC include: If organizations such as ABC or ACT can spend a mix of hard and soft money, what rules will govern the ratio? And under what circumstance will 527 organizations -- such as the Media Fund, which is currently not registered with the FEC -- and politically active groups known as 501c4s, fall under FEC regulation?

In reports filed with the FEC, ACT has used an allocation formula allowing it to pay 98 percent of its costs with soft money and 2 percent with hard money. The FEC yesterday signaled it will reconsider such allocation formulas in May.

If ACT were required to spend hard and soft money equally, the committee would have to raise large amounts of difficult-to-come-by hard money, a costly and time-consuming process.

On philosophical, not partisan, grounds, two of the Republican commissioners -- Chairman Bradley A. Smith and David M. Mason -- voted against regulation of the Democratic groups, rejecting pressure from the RNC. "If Republicans think they can win by silencing their opponents, they are wrong," said Smith, and "they are going to deserve to lose."

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The Washington Post March 10, 2004 Wednesday

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March 10, 2004 Wednesday
Final Edition

SECTION: A Section; A01

LENGTH: 1336 words

HEADLINE: Democrats Forming Parallel Campaign;
Interest Groups Draw GOP Fire

BYLINE: Dan Balz and Thomas B. Edsall, Washington Post Staff Writers

BODY:

Led by veterans of presidential and congressional campaigns, a coalition of Democratic Party interest groups, armed with millions of dollars in soft money, is rapidly constructing an unprecedented political operation designed to supplement the activities of Sen. John F. Kerry's campaign in the effort to defeat President Bush.

The newest visible sign of the coalition's activities will be seen beginning today, when a \$5 million advertising campaign begins in 17 battleground states. But behind the scenes, Democratic operatives are moving to set up coordinated national and state-by-state operations that amount to the equivalent of a full presidential campaign, minus the candidate.

The Democratic groups have created five organizations to oversee facets of the campaign: paid advertising; voter identification and turnout; communications, polling, research and rapid response; fundraising; and the coordination of the operations of more than two dozen liberal organizations.

This parallel Democratic campaign, already under legal challenge, grows out of changes in campaign finance laws. Those changes prohibit the national party committees from raising and spending soft money -- large, unregulated contributions -- on behalf of their presidential candidates. The Democrats have taken the expertise they developed in past campaigns and applied it to the new, separate operation. By law, coalition members cannot coordinate with the campaign of Kerry (Mass.), the presumptive Democratic candidate.

"Our sense was we needed to have a message up on the air that tells the truth about the Bush record and defends the Democratic position on the issues," said Ellen Malcolm, president of Emily's List and a driving force behind the coordinated effort. "There is no question that Bush has \$100 million and Kerry is down to zero. It's very important that there are alternative voices out there talking about the Bush record."

Most of these new organizations have been established as "527s," shorthand for the provision of the tax law that covers their activities. The 527s are controversial because they accept soft money from corporations and unions, which critics say represents an evasion of the ban on large, unregulated contributions in the new campaign finance law known as the McCain-Feingold Act, and because they operate under less stringent disclosure regulations.

A new ad to be launched today was produced by the Media Fund, the principal vehicle for pro-Democratic television commercials by the coalition. But the coalition's advertising effort will be shared by MoveOn.org, the Internet-based liberal advocacy group that has become part of the umbrella operation established by the Democratic organizations.

The new ad -- one of three tested in focus groups in Tampa and Pittsburgh -- states that "George Bush's priorities are eroding the American Dream."

Ben Ginsberg, a lawyer for the Bush-Cheney campaign, called the Media Fund ads "a blatant circumvention of the new campaign finance law." He said the president's campaign plans to immediately file a complaint that seeks to have the Federal Election Commission determine whether groups "knowingly and willfully" solicited donors "to contribute in excess of federal law and to determine whether they [the donors] knew that the money was to defeat a federal candidate."

Harold Ickes, president of the Media Fund, said: "We would expect nothing less than scorched-earth harassment by the Republicans."

But in addition to the Bush-Cheney complaint, Democratic 527 groups face legal scrutiny by the FEC, which plans to issue new rules governing the organizations' activities. Republicans said the complaint is likely to take at least six months to process, and the new 527 rules will not be effective until late July at the earliest.

Republicans say that if the Democratic 527 activity is ruled legal, GOP groups will be quickly formed to match the opposition. Republicans have been under less pressure to raise non-party money because of the success of the Bush campaign, which has already raised about \$150 million, and the Republican National Committee. In addition, past corporate soft-money donors to the RNC are reluctant to risk legal repercussions while the status of 527s remains in limbo.

The Democratic groups have created an operation that combines close coordination with a division of labor designed to avoid duplication of effort and maximize resources. Beyond the Media Fund, the entities include Americans Coming Together (ACT), which is responsible for get-out-the-vote efforts; America Votes, the umbrella organization that will stitch together the activities of various progressive organizations; the Thunder Road Group, which will concentrate on research and rapid response; and the Joint Victory Campaign 2004, a combined fundraising committee.

Malcolm, of Emily's List, said the groups have raised about \$75 million, although other Democrats questioned whether all that money is in hand.

The Democratic 527 organizations have drawn support from some wealthy liberals determined to defeat Bush. They include financier George Soros and his wife, Susan Weber

Soros, who gave \$5 million to ACT and \$1.46 million to MoveOn.org; Peter B. Lewis, chief executive of the Progressive Corp., who gave \$3 million to ACT and \$500,000 to MoveOn; and Linda Pritzker, of the Hyatt hotel family, and her Sustainable World Corp., who gave \$4 million to the joint fundraising committee.

The Democratic coalition includes many of the party's most experienced strategists, spokesmen and fundraisers, as well former staffers for Kerry's campaign and the campaigns of several of his rivals. They include Ickes, who was deputy White House chief of staff in the Clinton administration, Steve Rosenthal, a former political director for the AFL-CIO who is executive director of ACT, and Jim Jordan, formerly Kerry's campaign manager, who heads the Thunder Road Group.

Bill Knapp, who did ads for the Gore and Clinton presidential campaigns the past three elections, oversees the advertising operation for the Media Fund. Five pollsters, several with presidential experience, are sharing the coalition's survey research work.

MoveOn.org already has spent millions of dollars on anti-Bush ads. Much of the group's work, according to several Democrats involved in the coalition, will be concentrated in five states that Democrats hope to pick up in November: Florida, Ohio, Missouri, West Virginia and Nevada.

The group ran ads for 10 weeks in those states, including a prescription drug ad that ran for four weeks. Polling conducted by Stan Greenberg, Bill Clinton's 1992 pollster, showed the ad was particularly effective in enlarging the Democrats' advantage on that issue, according to sources familiar with the research. That has convinced Democrats they can move the battlefield in Kerry's direction.

The New Democrat Network, a coalition member, plans a separate \$5 million television campaign aimed at Latino voters in four states.

On the organizing front, Rosenthal said he has hired state directors in 10 battleground states modeled on techniques successfully used by organized labor. Labor will be responsible for contacting union members. That will leave ACT free to concentrate on motivating other members of the Democrats' core constituencies, as well as some swing voters, using research from the National Committee for an Effective Congress to build sophisticated precinct vote goals.

Cecile Richards, executive director of America Votes, said her umbrella organization has hired eight state directors, with coordinating efforts beginning in 15 states. Individual organizations, from the Sierra Club to NARAL Pro-Choice America, will conduct their own activities.

But the Democrats hope to avoid a problem of past elections, when groups sent similar direct-mail messages to voters at the same time or concentrated on one area of a state to the exclusion of other areas. "We don't all need to be in Tampa," Richards said.

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The Washington Post March 24, 2004 Wednesday

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The Washington Post

March 24, 2004 Wednesday
Final Edition

SECTION: A Section; A01

LENGTH: 1335 words

HEADLINE: Democratic Spending Is Team Effort;
Groups' Ads Level Field for Kerry

BYLINE: Paul Farhi, Washington Post Staff Writer

BODY:

For the past week, television viewers in Lansing, Mich., have been seeing twice as many ads for President Bush's reelection campaign than for Sen. John F. Kerry (D-Mass.). But that does not mean Democrats have been falling behind. While Bush and Kerry slug it out, two liberal organizations, MoveOn.org and the Media Fund, have joined the fray with TV spots of their own, knocking the president's record on jobs and the Iraq war.

The result: When Kerry's ad spending is combined with that of the two independent groups, Democrats have been able to go toe to toe with the president. "The share of voice seems relatively equal here," said Michael J. King, general manager of WILX-TV, one of four Lansing stations running campaign ads. "The Democratic side is coming at it from two or three sources."

The ad wars in Lansing may be a microcosm of what is to come in the next few months in cities and states nationwide. In Michigan, Florida, Ohio and 14 other "battlegrounds" that could be decisive in the fall, Democrats are counting on independent but loyally Democratic organizations such as the Media Fund to level the huge fundraising advantage that Bush enjoys over Kerry.

Under federal campaign finance laws, these organizations -- representing teachers, environmentalists, civil rights and abortion rights activists and other traditional Democratic constituencies -- cannot legally coordinate their advertising or activities with the Kerry campaign or the Democratic National Committee. Nevertheless, a coalition of 28 groups says

It is poised to raise millions of dollars to supplement the Democratic effort between now and the Nov. 2 election, substantially closing the image-making gap with the president.

The groups, which include the AFL-CIO, the Sierra Club and the NAACP National Voter Fund, have no illusions that they can match Bush's potentially record-setting ad spending dollar for dollar, particularly at the national level (Bush's campaign is far outspending all of the Democrats on cable TV networks and radio). Instead, their goal is to keep Democrats competitive with Bush in a few dozen key cities until the Democratic National Convention in late July, after which Kerry will access about \$75 million in federal campaign money to compete with Bush.

"We find ourselves in a much more competitive situation than we had reason to think we'd be in a year ago," said Jim Jordan, Kerry's former campaign manager, who is advising several of the Democratic groups, including the Media Fund. "It's increasingly clear that Democrats will have enough money to stay competitive and be heard throughout the spring and summer. We're not spending as much [as Bush] but we don't have to. We just have to spend it in the right place."

As Lansing showed last week, the impact of outside groups can be substantial.

According to an independent expert and a Media Fund analysis of campaign ad spending in 17 swing states, Bush was actually reaching fewer people with his ads in several key markets than the combined Democratic effort. For example, the president was advertising at more than twice the ad level of Kerry alone in Des Moines -- but at only half the rate of all the Democrats once the Media Fund and MoveOn commercials were added in. The president also was behind in several populous regions of Ohio, Pennsylvania, Maine, Michigan, Minnesota, Missouri, West Virginia and Wisconsin.

In regions that look to be solid Bush country -- Florida's conservative Panhandle, for instance -- the Democrats are not advertising. Instead, they seem to have chosen to train their fire on areas with many undecided voters, such as Orlando and Tampa.

The Democrats' main goal is to prevent Kerry from being overwhelmed by Bush's paid messages during the post-primary period, when Kerry is relatively short of money. In 1996, President Bill Clinton used his fundraising advantage over his expected opponent, Sen. Robert J. Dole (R-Kan.), to saturate the airwaves with ads that defined his candidacy before Dole could raise the money to respond. Bush did something similar in 2000 before his opponent, Vice President Al Gore, was able to recover.

But many Republicans and some independent analysts argue that these Democratic groups -- known as "527s" for the section of the tax code under which they are organized -- are violating a ban on large unregulated contributions under election law. The Republican National Committee, joined by campaign watchdog groups, has asked the Federal Election Commission to rein in the Media Fund and other pro-Democratic groups because they operate under less stringent disclosure regulations than official party organizations.

Scott Stanzel, a spokesman for Bush's reelection effort, said Democrats have created a "shadow" party of organizations to skirt the spirit of the McCain-Feingold campaign finance law. Their ads, he said, "are more bitter attacks from angry partisans."

The six-member FEC is evenly divided between Republicans and Democrats, and one Democratic member has signaled her reluctance to order fundamental changes. The agency is not expected to finalize any action on the GOP petition until late July at the earliest, which means even a negative ruling for Democrats would have limited impact on the 527s' spending.

Anthony Corrado, a campaign finance expert and a visiting scholar at the Brookings Institution, said Bush is starting from behind in the ad wars because battleground states such as Iowa, New Hampshire and Wisconsin held Democratic primaries in which the candidates ran many anti-Bush ads. This, along with ads from the outside groups, may have prompted the Bush campaign to start spending money several weeks earlier than it had planned, he said.

While the allied-Democratic groups do not mention Kerry in their commercials, they do raise issues that Kerry, and local Democratic candidates, are likely to benefit from. For example, the Media Fund, a group headed by former Clinton White House adviser Harold Ickes, is running a 30-second spot featuring a picture of a factory that begins: "During the past three years, it's true George W. Bush has created more jobs. Unfortunately . . ." and here the camera pulls back to reveal Chinese lettering on the side of the factory, "they were created in places like China."

In the meantime, the Bush campaign has spent \$22.8 million on ads in battleground states, \$3.4 million on national cable TV and more than \$1 million on radio, Democratic media specialists said.

It is not clear how much the Democratic groups are poised to spend. But "when you combine the resources of labor, the teachers, the choice and environmental movement, you get to a big number pretty quickly," said Cecile Richards, president of America Votes, a group acting as "traffic cop" for the 28 allied Democratic organizations. "People used to wake up in September and realize there was an election coming. Now, they're waking up in March and giving."

Stanzel called the estimates of the Democratic fundraising prowess "substantial," but he questions whether these groups can turn pledges of support into actual spendable dollars. The Media Fund, for example, reported to the Federal Election Commission earlier this month that it had raised just \$3.4 million between November and early March.

Jordan said, however, that "the money comes in as we need it" from wealthy donors. As evidence, he said the group will extend last week's ad buy for another week, starting today.

Republicans have held off forming 527s, although strategists expect conservative-leaning groups to form them if the FEC declines to inhibit the Democratic groups.

Evan Tracey, chief operating officer of TNSMI/Campaign Media Analysis Group, an Arlington firm that tracks ad spending, said Democrats and Republicans are about equal in their spending now, "but the \$150 million question is how long [Democrats] can sustain" their fundraising. "One thing that's certain in all this is that Bush has money in the bank and the potential to keep raising it."

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The Washington Post April 1, 2004 Thursday

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April 1, 2004 Thursday
Final Edition

SECTION: A Section; A09 , POLITICS Paul Farhi

LENGTH: 715 words

HEADLINE: Outside Attack Ads Make It Harder to Shoot the Messenger

BYLINE: Paul Farhi

BODY:

It is, as you might have imagined, brutal out there in CampaignLand. All day and night the 30-second ads crowd the airwaves, each more vicious than the last about the presidential candidates. It's all so negative. And only seven months to go.

Of course, we're not talking about President Bush's ads and or those of John F. Kerry. Their spots have actually been relatively nice, with about two-thirds of their statements and claims being positive.

The real mudslinging has been done by outside organizations, most of them affiliated with Democrats, according to a new study. William L. Benoit, a communications professor at the University of Missouri at Columbia, looked at 21 spots aired by such groups as MoveOn PAC and the Media Fund. He found that they made negative statements about the candidates 93 percent of the time.

And, by "candidates," we mostly mean Bush, who was the overwhelming target of ads sponsored by these groups, known as 527s for the section of the tax code under which they're organized. Benoit said he found only one 527 ad -- from the conservative group Citizens United -- that did a number on the Massachusetts senator.

He said this is a new version of an old political game: having surrogates do the name-calling while the candidate remains high and dry. "The idea is that if voters get upset about all the attacks, their ire will be toward [the 527s] and not the candidate," he said.

But the individual with the biggest beef may be Richard A. Clarke, a former White House counterterrorism adviser. Clarke yesterday asked MoveOn PAC to stop running an ad that uses his criticism of the Bush administration's anti-terrorism program. MoveOn PAC began running the ad earlier this week. It features a quote from Clarke during a "60 Minutes" interview.

Clarke told the Associated Press that he didn't want to be seen as part of a partisan effort. But MoveOn PAC's Eli Pariser said the group won't pull the ad; it may even quote Clarke in another one soon. "We respect that he wants to stay above the political fray," Pariser said. "But we feel he had some incredibly important things to say."

The Treasury Department appeared to weigh in on the ongoing fight between President Bush and Democratic presidential candidate John F. Kerry over taxes when it issued a news release detailing how much the Massachusetts senator's proposals might cost.

The release didn't name Kerry, but it did describe in detail how much his programs would cost "hardworking individuals and married couples." Its estimates ranged from \$201 billion to \$476 billion, depending on what would be changed.

The Kerry campaign blasted the release, calling it a violation of the Hatch Act, which bars most government employees from participating in partisan politics while on the job. "Whether it's using Treasury officials to analyze John Kerry's plan to create 10 million jobs or CIA officials to help smear Richard Clarke, this White House is the most political White House the nation has ever seen," spokeswoman Stephanie Cutter said in a statement. "They will say and do anything to get reelected."

Rob Nichols, a spokesman for the agency, defended the analysis, saying that it was requested by House Majority Leader Tom DeLay (R-Tex.) and that the department often scores legislative proposals. "This is so that policymakers, as they engage in a debate on changes in the tax code, will have facts at their disposal," he said.

Nevertheless, Sen. Frank Lautenberg (D-N.J.) asked Treasury's Inspector general yesterday to look into the matter. House Minority Leader Nancy Pelosi (D-Calif.) has another idea: She wants the Treasury Department to do an analysis of the 2001 and 2003 Bush tax cuts, a move Democrats have been requesting for months.

"Administration agrees to let [national security adviser Condoleezza] Rice testify publicly to Sept. 11 Commission."

-- Associated Press story, March 30, moved 10:04 a.m.

"In the wake of continuing refusals by National Security Advisor Condoleezza Rice to testify before the 9/11 Commission, Democratic presidential candidate Dennis Kucinich today [said] . . . Rice should testify publicly . . ."

-- News release from Kucinich campaign, received via e-mail, March 30, 12:30 p.m.

Political researcher Brian Falter contributed to this report.

LOAD-DATE: April 1, 2004

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**BEFORE THE FEDERAL ELECTION COMMISSION
MATTER UNDER REVIEW NO. 5541**

DECLARATION OF BILL MILLER

1. My name is Bill Miller. I am the Vice President and Political Director for the U.S. Chamber of Commerce.
2. As Vice President and Political Director, I am responsible for managing and implementing the Chamber's grassroots election-related activities. I have not had conversations with White House personnel or representatives of the Bush-Cheney '04 campaign regarding the November Fund or the 2004 presidential campaign.
3. It is my understanding that Business Roundtable President John J. Castellani met with Democratic National Committee Chairman Terry McAuliffe on January 30, 2004, to solicit ideas for nonpartisan voter mobilization activities by the trade association community. This meeting with Mr. McAuliffe occurred before Senator Kerry had been selected as the presidential nominee for the Democratic Party. Mr. McAuliffe made suggestions for a meeting of trade associations to discuss voter mobilization activities, and recommended that the group invite speakers from the Democratic National Committee, Republican National Committee, and the two presidential campaigns.
4. On April 19, 2004, the Chamber hosted a nonpartisan "Get-Out-The-Vote" Best Practices Group Meeting. The Chamber invited its largest 100 trade association members, and I believe the National Association of Wholesaler-Distributors, the Edison Electric Institute, and the Associated General Contractors of America invited additional trade associations.

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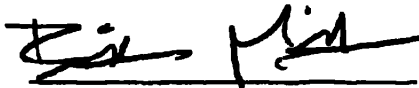
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Representatives from a total of 66 trade associations attended. The group also extended invitations to Democratic National Committee Chairman Terry McAuliffe, Kerry Campaign Manager Mary Beth Cahill, Republican National Committee Chairman Ed Gillespie, and Bush-Cheney '04 Campaign Manager Ken Mehlman. Although Mr. Gillespie and Mr. Mehlman attended and spoke at the meeting, neither Mr. McAuliffe nor Ms. Cahill were able to attend. Tad Devine, a senior advisor to the Kerry campaign, attended and spoke on behalf of the Kerry campaign at the event. Chamber President Thomas J. Donohue did not attend the meeting. Although press were not invited to the event, the Chamber did not consider it a "closed" event.

5. The focus of Mr. Mehlman's comments to at the meeting were on the importance of participation in the political process. Although he may have mentioned the well-publicized fundraising and other activities of left-leaning section 527 organizations, that was not the focus of his remarks. I did not interpret anything he said as a request for the attendees to form section 527 organizations to support President Bush or oppose Senator Kerry, and indeed such remarks would have been inappropriate in view of the non-partisan nature of the meeting.

6. Although I had no responsibility for the November Fund, I was aware of its formation and generally aware of its activities. To the best of my knowledge, information, and belief, neither the Chamber nor the November Fund discussed or shared its plans or strategies with the Bush-Cheney campaign, and neither was privy to nonpublic information about the plans or strategies of the Bush-Cheney campaign. Simply put, I am aware of no coordination or efforts to coordinate the activities of the Chamber or the November Fund with the Bush-Cheney campaign.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Bill Miller", written over a horizontal line.

Bill Miller

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**BEFORE THE FEDERAL ELECTION COMMISSION
MATTER UNDER REVIEW NO. 5541**

DECLARATION OF SUZANNE CLARK

1. My name is Suzanne Clark. I am the Executive Vice President and Chief Operating Officer of the U.S. Chamber of Commerce, a national non-profit corporation that advocates on behalf of business issues.
2. As Executive Vice President and Chief Operating Officer, I am responsible for the day-to-day operations of the U.S. Chamber of Commerce, including finances, information technology, and human resources. I also oversee the Chamber's corporate communications and media relations departments.
3. On April 19, 2004, the U.S. Chamber of Commerce hosted a meeting for representatives from approximately 66 trade organizations. The purpose of the meeting was to discuss the best practices for nonpartisan "get-out-the-vote" efforts in preparation for the 2004 election. The Chamber invited representatives from the Democratic National Committee, the Kerry-Edwards 2004 Presidential Campaign, the Republican National Committee, and Bush-Cheney '04 Presidential Campaign to attend and speak at the event.
4. Although Chamber President Thomas J. Donohue and I did not attend, records show that both Republican National Committee Chairman Ed Gillespie and Bush-Cheney '04 Campaign Manager Ken Mehlman spoke at the "get-out-the-vote" meeting. Neither Democratic National Committee Chairman Terry McAuliffe, nor Kerry-Edwards Campaign Manager Mary Beth Cahill were able to attend, but Kerry campaign representative Tad Devine did attend and

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speaking. No individuals who were later employed by or affiliated with the November Fund were present at the event.

5. Shortly after Senator John Kerry selected Senator John Edwards as his running mate for Vice-President in July 2004, Ken Rietz contacted the Chamber to inquire about our interest in supporting a prospective media campaign relating to litigation reform and Senator Edwards's close association to trial lawyers who oppose malpractice reform. According to Mr. Rietz, Senator Edwards' selection presented a unique opportunity to highlight litigation reform issues to voters. Because the Chamber shared this goal of advancing legal reform policies, we agreed to donate to what became the November Fund. Mr. Rietz became the Director of the November Fund.

6. On August 12, 2004, the November Fund filed for "political organization" status under section 527 of the Internal Revenue Code. As noted on the organization's Internal Revenue Service filing papers, its statement of purpose is to engage in voter education activities regarding the public policy positions of elected officials.

7. Although I do not have, and have never had, any responsibility for the day to day operations of the November Fund, I serve as a member of the Advisory Board for the November Fund. I have been a member of the Advisory Board since the formation of the November Fund in July 2004, and am the only officer or employee of the Chamber who has ever held such a position. The November Fund is an issue advocacy organization that focuses on legal reform issues. It is a separate entity from the Chamber in all aspects, including its officers and employees.

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8. As a member of the November Fund's Advisory Board, I participate in strategy meetings. November Fund meetings are always attended by legal counsel to ensure that the organization complies with federal election laws. The members of the Advisory Board and I are aware of the federal election laws and regulations governing advertising and electioneering communications.

9. During the course of the 2004 general election, the Chamber donated \$1 million to the November Fund, and the Chamber's affiliate the Institute for Legal Reform donated \$2 million. These donations helped pay for the production and dissemination of several forms of issue advocacy relating to legal reform, including broadcast advertisements in seven states, as well as the administrative costs of running the November Fund. None of the November Fund's broadcast advertisements referred to any candidate for federal office. In addition, the November Fund allocated resources toward print advertising, mass mail, and an Internet website that focused on litigation reform and Senator Edwards's previous career as a trial attorney. None of the print advertising, mass mail, or Internet website communications contained any language expressly advocating the election or defeat of any federal candidate.

10. No representatives from the Bush-Cheney '04 campaign or the White House served as employees or volunteers for the November Fund. Moreover, the November Fund did not hold any meetings in which representatives of the Bush-Cheney '04 campaign or the White House either attended or were invited to attend. No representatives from the Bush-Cheney '04 campaign or the White House participated in discussions or decisions regarding the November Fund's strategy for fundraising, expenses, and media. Finally, the November Fund did not inform any representatives of the Bush-Cheney '04 campaign or the White House of its advertising, mailing, strategies, or activities.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.


Suzanne Clark

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THE NOVEMBER FUND

PO Box 3

Alexandria, VA 22313

August 16, 2004

VIA HAND DELIVERY

Ms. Suzanne Clark
Chief Operating Officer
US Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Dear Suzanne:

I am writing on behalf of The November Fund, which has been co-founded by Craig Fuller, Bill Brock and myself. As you know, reform of our legal system, particularly with regards to medical malpractice lawsuit abuse, is a pressing national need. That is why we have established The November Fund in order to disseminate public information on this and related issues.

The Fund is registered with the IRS as a 527 organization. It is an issue advocacy organization. It will not make contributions to candidates for political office and will not make any expenditures as defined under the Federal Election Campaign Act. For those reasons, it is not a political committee that must register with the Federal Election Commission. As a result, The November Fund legally may accept donations in any amount from individuals or organizations including corporations. We cannot accept gifts from foreign nationals. All donations over \$200 will be disclosed on reports filed with the IRS. Donations are not tax deductible.

We ask the US Chamber to consider making a generous donation of \$500,000 to the Fund. Your money will help us in telling the American people "The Truth About Trial Lawyers", which is the theme of our media effort.

If you would like to discuss our effort please contact me. Otherwise, please delivery by courier any donation made payable to "The November Fund" to Dirk Smith, 201 N. Union Street, Suite 530, Alexandria, VA 22314.

Sincerely,



Kenneth C. Rietz

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